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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,668	08/16/2001	Andrew Michael Pelletier	GEMS:0055--1/YOD 31-PN-62	3806
7590 07/19/2006			EXAMINER	
Patrick S. Yoder Fletcher, Yoder & Van Someren P.O. Box 692289 Houston, TX 77269-2289			BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,668

Applicant(s)

PELLETIER ET AL.

Examiner

Mark W. Bockelman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-19,21-32 and 34-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-19,21-32 and 34-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

In view of the remarks filed on 12-13-2004, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Objections

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant uses means plus function language in for each of the limitations in claim 28 which are not readily apparent to the examiner as to which disclosed structure in the figures the recited means corresponds. The examiner requires applicant to amend the specification to explicitly state what structure performs the recited function for each means plus function element recited in claim 28. See MPEP §

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2181 IV. The examiner also requires applicant to demonstrate where the method claims are supported in the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention; and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-19, 21-32 and 34-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 16, 23 and 28 all recite in various forms that the device or method has a step or means for updating a presentation and retransmitting the presentation or updated interface page to the browser/general purpose display device only in real time mode. Applicant has no support for the retransmission of the entire presentation or the entire updated interface page in the original specification of the current application, the parent application, or in the parent application claims. At best, applicant stated in original claim 27 of the parent application that at least a portion of the presentation is "retransmitted", which seems to be a misuse of the word. In applicant's specification beginning at page 13 line 17, it is noted that at step 110, the remote monitoring station will access the general presentation software necessary for configuring the presentation data. Such software is

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later disclosed as Java applets etc which are stored on the computer or downloaded thereto at step 118. Thus part of the presentation is already on the remote monitoring site. See figure 1 with browser and applets stored on remote workstation. Then the transmission of presentation data, which are configured by the Java applets, is performed. Then, in applicant's original specification, paragraph 1 of referencing accompanying figure 5, items 120-124, with regard to real time transmission, it is stated;

When such data becomes available, the updated data is transmitted at step 120 and redisplayed as indicated above at step 122. To promote the rapid and efficient transfer and display of updated data, only newly available data is transmitted and inserted upon each cycle through step 120 and 122.

Clearly there is no *retransmission* involved and especially of the entire page or presentation, but rather only the new transmission of newly acquired data, which is received at the remote computer with an incorporation of new data by the browser for display. This is simple real time transmission. Data is transmitted as it arrives to the server and incorporated to the existing presentation at the remote location for display.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-19, 21-32 and 34-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant uses means plus function language in claims 28-32, 34-35, 42-44 which have no identified corresponding

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structure in the specification and thus rendering the elements indefinite in meaning. In addition, each of independent claims, applicant claims the transmission of a presentation and the retransmission of the presentation in real time. The language is contrary to that which is described in the specification and thus renders it confusing and indefinite. There is no transmission of the presentation or retransmission of an updated version of the presentation in real time mode.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious

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at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28-32, 34, 42-43 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Frid et al. USPN 5,857,967 (alone or alternatively in view of Gat USPN 5,954,663 and/or Egler U.S. Patent No. 5,458,116).

Frid et al. teach the use of a general purpose network see figure 1 that uses a communication network 30, a browser 40, a healthcare device 10 and a web server 14. In column 4 lines 26, it is disclosed that the health care device may be an electrocardiogram recorder. Since such devices can be used to measure fetal ecgs the examiner considers the ECG monitor 10 to be a means for detecting a fetal parameter of interest and for generating a fetal condition signal. It is stated that the device makes ecg recordings that may be accessed by the web server. The examiner thus considers the recorder to be means for storing the fetal condition signal. The examiner considers the display element, the browser and its associated software for displaying the ecg data to be means for defining a general purpose network presentation. The means for transmitting the presentation is the same as applicant's means which includes a server, a general communication network 30 and associated software such as http links, URLs, html files etc. permit the html files to be transmitted. Frid et al teaches in general that files including the requested data stored as html files are transmitted to the computer and display station (see column 5-13). As known in the art, such files need only be

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transmitted once since the data stored therein needs no updating. Frid discusses accessing recorded ecgs in column 4 lines 29-33. Frid never states that the files are retransmitted in this mode and thus the examiner considers this to be a mode in which no retransmission takes place. Frid teaches the medical device may also provide real-time ecg data to an external web browser using HTTP and HTML protocols. Real time transmission entails the transmission of new data as it becomes available by definition. Since this is the same procedure as that discussed in applicant's specification, the examiner considers this to be a means for "updating the presentation" and means for "retransmitting the presentation" to the general purpose display station only when the presentation is in real time mode. To the extent applicant's specification supports this kind of language the Frid device is applicable to the claim language as well. While the ecg recorder of Frid is not disclosed as an fetal sensor, it is considered the same or an equivalent thereof. If not, the examiner alternatively applies Gat which discloses a CTG sensor for fetal heart traces. To have used the Frid system to monitor fetal heart conditions would have been obvious. In addition, since Frid teaches that the server can transmit recorded data and also real time data using HTTP protocol, the examiner considers this a teaching for providing both functions and one would expect each can be selected by web page links. If not it would have been obvious since it was well known to provide physicians with the ability to select between various time periods (historical data) and real time viewing as evidenced by Egler (see switch 330 and column 4 lines 42-48).

2. Claims 16-19, 21-27 and 35-41, 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frid et al USPN 5,857,967 in view of Gat U.S. Patent No. 5,954,663 or vice versa (and optionally Egler U.S. Patent No. 5,458,116).

With respect to claims 35 and 44, applicant recites a graphical display and various alternative data such as a patient name. Gat shows graphical displays of heart data as well as the inclusion of the name in the data. To have presented the Frid display in graphical form along with a patient ID would have been obvious since such is conventional for viewing ecgs and fetal data and identifying patient to which the trace belongs is common sense.

As noted above Frid et al uses the same system as applicant for recording and accessing ecg's and applicant's method step closely follow each means clause. Applicant differs in his methods by recording fetal sensor data for transmission and viewing. Implementing the Gat sensors into the Frid et al system, or alternatively, applying the Frid internet system to the Gat device for the specific advantages taught over Gat type systems would have been obvious. "Retransmission" is performed in the same sense as applicant disclosed in his originally filed application, that is the newly arriving data to the server would be transmitted in real time to the browser as provided by Frid. Such real time implementations on the internet have been well known prior to applicant's effective filing data. As noted above, Frid is considered to provide both HTTP protocol for historical file transmission as well as real time transmission, however, the examiner additionally cites Egler to demonstrate that providing the option to a

viewer to select between historical data and real time data at the display device was a well know inclusion in the types of heart monitoring systems taught by Frid et al.

Response to Arguments

Applicant's arguments filed 9-3-2004 have been fully considered but are not deemed persuasive. Applicant has no support in his specification for what he claiming and what he arguing. There is simply no retransmission of presentations taught in his originally filed specification. Applicant merely provides for the accessing files of prerecorded material, ie historical data and/or the transmission of new incoming data. The data is configured into the existing presentation at the display monitor. This is the same method and implementation taught by Frid et al..


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Thursday 10-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB

April 16, 2006


MARK BOCKELMAN
PRIMARY EXAMINER